



Vermont Department of Environmental Conservation

Air Quality & Climate Division

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Agency of Natural Resources

July 11, 2016

David Conroy

EPA- New England, Region 1

5 Post Office Square #100

Boston, MA 02109

RE: Withdrawal of specific provisions from Vermont's 1993, 2011, and 2014 State Implementation Plan revisions

Dear Mr. ~~Conroy~~, Dave

The purpose of this letter is to withdraw certain specific provisions contained in revisions to Vermont's State Implementation Plan (SIP) for the 1993, 2011 and 2014 submittals. While the specific provisions at issue were never approved by EPA, subsequent events and clarifications have made some of the original provisions contained within the three submittals ripe for withdrawal. In addition, in some cases, provisions contained within earlier submitted revisions have been superseded by a subsequent SIP submittal.

Enclosed is a list of each provision that Vermont is withdrawing from its 1993, 2011 and 2014 SIP submittals. Please note that the language Vermont is withdrawing does not include any regulatory language that has already been approved into the SIP by EPA. The withdrawals also do not include any regulatory language that Vermont did not seek approval for as part of the SIP at the time of the relevant original submittals. Therefore, there is language within the sections or subsections of the Vermont Air Pollution Control Regulations (APCR) submitted in 1993, 2011 and 2014 that is not being withdrawn. In the attached list, language that is being withdrawn is denoted by underline, strikethrough, or listed as withdrawn in its entirety. As requested by EPA, a Clean Air Act §110(l) analysis is also attached for APCR §§5-251 and 5-252.

Vermont appreciates the time and resources that EPA Region 1 staff have dedicated to working with the Air Quality and Climate Division to clarify SIP requirements and the SIP process. We have noted throughout this process that many of the issues leading to the need to withdraw proposed SIP revisions were not addressed in EPA comments during the rulemaking process. Vermont requests that EPA make every effort to address the issues, that would otherwise result in a withdrawal, during the informal and formal comment periods that Vermont conducts in connection with its rulemaking and SIP revision procedures. If you have any question regarding this matter, please contact Bennet Leon at bennet.leon@vermont.gov or (802)249-4221.

Sincerely,

Heidi Hales

Director, Air Quality and Climate Division

Vermont Department of Environmental Conservation

Enclosures(4)

Attachment 1: List of provisions being withdrawn from Vermont's August 9, 1993 SIP Revision

| Vermont Air Pollution Control Regulations Section (revision underlined) | Comments |
|---|----------|
| §5-101 " <u>Allowable Emissions</u> " means the <i>emission</i> rate calculated using the maximum rated capacity of the source and, if applicable, either: (a) The applicable <i>emission</i> standard contained in these regulations, if any, or (b) The <i>emission</i> rate or design, operational or equipment standard specified in any order or agreement issued under these regulations <u>that is state and federally enforceable</u> . | Withdraw |
| §5-101 " <u>Federally Enforceable</u> " means all limitations and conditions which are enforceable by the U.S. Environmental Protection Agency, whether contained in federal regulations, a state implementation plan, or construction or operating permits. | Withdraw |
| §5-101 " <u>State Enforceable</u> " means all limitations and conditions which are enforceable by the <i>Agency</i> by means of state regulations, construction or operating permits, administrative orders, assurances of discontinuance, court orders, or contracts. | Withdraw |
| §5-101 " <u>Emission Reduction Credit</u> " or " <u>ERC</u> " means the certified quantity of an <i>emission</i> reduction from a source that may be stored or used as described in Section 5-502. | Withdraw |
| §5-101 " <u>Most Stringent Emission Rate (MSER)</u> " a rate of <i>emissions</i> which the <i>Secretary</i> , on a case-by-case basis, determines is achievable for a source based on the lowest <i>emission</i> rate achieved in practice by such category of source, unless the source demonstrates it cannot achieve such a rate due to economic impacts and costs. Costs of achievement of <i>MSER</i> will be accorded less weight for sources or <i>modifications</i> locating in <i>non-attainment areas</i> than for sources or <i>modifications</i> locating in <i>attainment areas</i> for the applicable <i>air contaminant</i> . In no event shall application of <i>MSER</i> result in <i>emissions</i> of any contaminants in excess of any federal <i>emission</i> standard or any <i>emission</i> standard contained in these regulations. If the <i>Secretary</i> determines that imposition of an <i>emission</i> standard is infeasible, a design, equipment, work practice or operational standard, or combination thereof, may be prescribed instead as constituting <i>MSER</i> . | Withdraw |
| §5-101 " <u>Permanent</u> ", in reference to <i>emission</i> reductions, means that the <i>emission</i> reduction is assured for the life of the corresponding <i>emission</i> increase. The permanence of the subject reduction shall be guaranteed through an enforceable permit limitation confirming the amount and duration of the decrease, or other enforceable mechanism (e.g., <i>permanently</i> dismantling | Withdraw |

| Vermont Air Pollution Control Regulations Section (revision underlined) | Comments |
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| <u>and removing the <i>emissions</i> source, surrendering the permit, etc).</u> | |
| §5-101 " <u>Quantifiable</u> ", in reference to <i>emission</i> reductions, means that the amount, rate and characteristics of the <i>emission</i> reduction can be <u>determined through an accurate and reliable method (e.g., through <i>emissions</i> tests, continuous <i>emissions</i> monitoring, material balance, etc.)</u> . | Withdraw |
| §5-101 " <u>Surplus</u> ", in reference to <i>emission</i> reductions, means <i>emission</i> reductions that are voluntarily created by a source and are not required by any state or federal laws or regulations or related permits, orders or agreements and are not relied upon for <i>Agency</i> planning purposes. | Withdraw |
| §5-502 (3) – Entire subsection | Withdraw. This section was approved by EPA in 1997. |
| §5-502 (6) – Entire subsection | Withdraw. This entire section was resubmitted in Vermont's 2011 SIP submittal. |
| §5-502 (7) – Entire subsection | Withdraw. This entire section was resubmitted in Vermont's 2011 SIP submittal. |
| SIP Narrative | Withdraw |

Attachment 2: List of provisions to withdraw from Vermont's February 14, 2011 SIP Revision

| Vermont Air Pollution Control Regulations Section (revisions underlined) | Comments |
|---|---|
| §5-101 <u>"Emergency Use Engine" means an engine used only for emergency purposes and up to 100 hours per year for routine testing and maintenance. Emergency purposes are limited to periods of time when: (1) the usual source of power, heat or lighting is temporarily unavailable due to reasons beyond the reasonable control of the owner/operator; (2) the Independent System Operator has determined a power capacity deficiency exists and has implemented a voltage reduction of five (5) percent or more of normal operating voltage; or (3) a fire or flood make it necessary to pump water to minimize property damage.</u> | Withdraw |
| §5-101 <u>"Public Notice" notice given to the public by prominent advertisement in the State announcing the date(s), time(s), and place(s) of public hearings as required in the Code of Federal Regulations, CFR Title 40, Part 51.4. Notice shall be given at least 30 days prior to the date of such hearings.</u> | Withdraw revision removing definition from the regulations. |
| §5-401, subsections (1), (3) – (5), (7) – (17) | Withdraw revision from consideration due to the fact that these subsections were submitted for approval in error. |
| <p>§5-401 (6) – <i>Fuel</i> burning installations:</p> <p>(a) Fossil fuel burning equipment as specified below:</p> <p>(i) For <i>fuel-burning equipment</i> which solely burns gaseous fuels, individual units of 10 million BTU per hour rated heat input or greater;</p> <p>(ii) For <i>fuel-burning equipment</i> which burns <i>fuel oil</i>, individual units of 3 million BTU per hour rated <i>heat input</i> or greater which aggregate to 10 million BTU per hour or greater;</p> <p>(iii) For <i>fuel-burning equipment</i> which burns anthracite coal, individual units of 5 million BTU per hour rated <i>heat input</i> or greater; and</p> <p>(iv) Any <i>fuel-burning equipment</i> which burns bituminous coal.</p> <p>(b) <i>Wood fuel burning equipment</i> of greater than 90 H.P. rated output;</p> <p>(c) <i>Stationary reciprocating internal combustion engines</i> using any <i>fuel</i> type and having a rating of 450 brake horsepower output or greater; <u>except that emergency use engines</u> Engines used for emergency or</p> | Withdraw revision, Vermont in the process of submitting a 110(l) analysis to EPA. |

| Vermont Air Pollution Control Regulations Section (revisions underlined) | Comments |
|---|--|
| <p>stand by purposes shall not be classified as air contaminant sources for purposes of Section 5-501 of these regulations, provided the engine operates for a period no greater than 200 hours per calendar year.</p> | |
| <p>§5-404 (1) – (4)</p> <p>(1) Whenever the <i>Air Pollution Control Officer</i> has reason to believe that the <i>emission</i> limits of these regulations are being violated by a source, he <u>or she</u> may require the owner or operator of said source to conduct tests to determine the quantity of <i>particulate</i> and/or <i>gaseous matter</i> being emitted, which tests shall include <i>stack</i> tests if circumstances so demand. In the event that <i>stack</i> testing is required, the tests shall be performed in accordance with procedures specified in 40 <i>CFR</i> 60, Appendix A, or other methods approved by the <i>Air Pollution Control Officer</i>. Testing to determine the quantity of <i>particulate matter emissions</i> from cyclones shall be performed by using the high volume sampling method, or an <i>equivalent method</i> approved by the <i>Air Pollution Control Officer</i>.</p> <p>(2) Should the <i>Air Pollution Control Officer</i> wish to conduct tests of his <u>or her</u> own to determine compliance with the <i>emission</i> limits of these regulations, the owner or operator of the source to be tested shall provide at no expense to the state of Vermont, reasonable and necessary openings in <i>stacks</i>, vents and ducts, along with safe and easy access thereto, including a suitable power source to the point of testing.</p> <p>(3) The <i>Air Pollution Control Officer</i> shall be supplied with such data as he <u>or she may</u> require to establish test conditions.</p> <p>(4) The method, or any conditions associated with the method, of source testing required under this section shall be approved by the <i>Air Pollution Control Officer</i>.</p> | <p>Withdraw revision from consideration due to the fact that these subsections were submitted for approval in error.</p> |
| <p>§5-501(2) – <u>Within 15 days of his receipt of such notice, the Secretary may require the submission of A complete application shall contain such plans, specifications, analyses and other information as he the Secretary deems necessary in order to determine whether the proposed construction, installation or modification will comply with these regulations and Vermont statutes at Title 10, chapter 23. Other information may include analyses of the impact on any Class I area, including visibility and any other air quality related value specified by the Federal Land Manager, and comments, if any, from the Federal Land Manager.</u></p> | <p>Withdraw</p> |

| Vermont Air Pollution Control Regulations Section (revisions underlined) | Comments |
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| §5-501(3) – entire subsection | Withdraw |
| §5-501(7)(a), (7)(b), (7)(d), (7)(e), (7)(f), (7)(g) - entire subsections | Withdraw |
| §5-502(3) – entire subsection | Withdraw revision from consideration due to the fact that this subsection was submitted for approval in error. This subsection is already in the approved SIP. |
| §5-502(1),(4)(c), (4)(d) and (5) – entire subsections | Withdraw revision from consideration due to the fact that these subsections were submitted for approval in error. These subsections are already in the approved SIP. |
| <p>§5-502(6)(a) - (a) The <i>Secretary</i> shall not issue an order a permit approving construction of any source or <i>modification</i> subject to this section if the source or <i>modification</i> is unable to demonstrate, as required under Paragraph (4), that the increase in <i>allowable emissions</i> from it will not significantly contribute to a violation of any applicable <i>ambient air quality standard</i> unless, prior to issuance of any such order permit:</p> <p>(i) The source <i>owner or operator</i> secures legally binding offsetting <i>emission</i> reductions, not otherwise to be utilized as part of the State's attainment strategies, of the <i>air contaminant</i> contributing to such a violation from existing sources located in or impacting on the same area (whether or not under the same ownership) such as to provide a net <i>emission</i> reduction acceptable to the <i>Secretary</i>, and</p> <p>(ii) The source <i>owner or operator</i> certifies that all existing sources of the source owner located in the State are in compliance with all applicable rules or are meeting all steps of any compliance schedules contained in any administrative orders or court decrees.</p> | Withdraw |
| <p>§5-502(6)(c) - Only <i>emission</i> reductions that meet the following criteria shall be eligible for use as offsetting <i>emission</i> reductions under Section 5-502(6):</p> <p>(i) <u>Except for ozone precursors, <i>emission</i> reductions of a contaminant may only be used to offset <i>emissions</i> of the same contaminant. <i>Emission</i> reductions of <i>particulate matter</i> may only be used to offset <i>emissions</i> of equally or less hazardous forms of <i>particulate matter</i>. For the purpose of offsetting ozone precursors, emission reductions for nitrogen oxides or VOCs can be used to offset emissions of each other if approved by the Secretary and EPA on a case-by-case basis;</u></p> | Withdraw |

| Vermont Air Pollution Control Regulations Section (revisions underlined) | Comments |
|---|----------|
| <p>(ii) Emission reductions shall be real, surplus, quantifiable, permanent, and state and federally enforceable.</p> <p>(iii) <i>Emission</i> reductions must have occurred after January 1, 1990, or within five <u>ten</u> years previous to the date of any application under this section in which the reduction is proposed to be used, whichever is more recent; <u>and</u></p> <p>(iii) The emissions reductions must be <i>emission reductions credits</i> pursuant to subsection 5-502(7) or <i>ERCs</i> generated in another state where a reciprocal trading agreement has been established between Vermont and such other state.</p> <p>(iv) Emission from sources which have been issued permits but never operated, or which have engaged in normal operations for less than one (1) year, may not be used as offsetting emission reductions.</p> <p>(v) The emission reductions creating source must be subject to state enforceable permit or contract conditions that the emission reductions will be provided in accordance with the provisions of this section and will continue for the reasonably expected life of the proposed source.</p> <p>(vi) If the emission reduction is created from the shutdown of a source not subject to permits, offset requirements or enforceable production constraints, such that the demand for the services or its product could merely shift to other similar sources in the state with no decrease in emission state-wide, the applicant shall demonstrate that such reductions will not result in such a shift.</p> | |
| <p>§§5-502(7) - <i>Emission Reduction Credits</i> for Nitrogen Oxides</p> <p>(a) The <i>owner or operator</i> of a source at which a reduction in <i>emissions</i> of nitrogen oxides or VOCs has occurred may apply to the <i>Secretary</i> for certification of the reduction as an <i>emission reduction credit (ERC)</i>. <u>Ten percent of all actual emission reductions identified by the owner or operator for certification will revert to the Agency for its use as it sees fit.</u> Once certified by the <i>Secretary</i>, an <i>ERC</i> may be used to offset increased <i>emissions</i> from new or modified sources or for other purposes approved by the <i>Secretary</i>.</p> | Withdraw |

| Vermont Air Pollution Control Regulations Section (revisions underlined) | Comments |
|---|--|
| <p>(b) Only <i>emission</i> reductions that meet the following eligibility criteria specified in Section 5-502(6)(c) and the requirements of Section 5-502(6)(d) <u>may</u> shall be certified as <i>ERC's</i>:</p> <p>(i) <u>Emission</u> reductions may be created by shutdown, curtailment, or over control of <i>emissions</i> beyond an applicable limit, or any other reduction method acceptable to the <i>Secretary</i>.</p> <p>(ii) <u>Emission</u> reductions shall be real, <i>surplus</i>, <i>quantifiable</i>, <i>permanent</i>, and state and <i>federally enforceable</i>.</p> <p>(iii) <u>Emissions</u> from sources which have been issued permits but never operated, or which have engaged in normal operations for less than one (1) year, shall not be used as offsetting <i>emission</i> reductions.</p> <p>(iv) <u>Emission</u> reductions may be certified as <i>ERC's</i> only after the reductions have actually occurred.</p> <p>(c) For emission reductions create prior to the effective date of this section, an application for certification shall be submitted within nine months from the effective date of this section. For emission reductions created after the effective date of this section, An application for certification shall be submitted within 18 months after the <i>emission</i> reduction occurs.</p> <p>(d) emission reductions may be certified as ERCs only after the reductions have actually occurred.</p> <p>(de) In order to confirm <i>emission</i> reductions claimed in conjunction with an application for <i>ERC</i> certification, the <i>Secretary</i> may require the submission of production, <i>fuel</i> use or other records or <i>emissions</i> testing or the use of continuous <i>emissions</i> monitoring or other appropriate means of measurement. The same or an <i>equivalent method</i> of measurement shall be used to quantify <i>emissions</i> both before and after the reduction.</p> <p>(e) <u>Where a reciprocal trading agreement has been established between Vermont and another state, ERCs generated in Vermont may be used in such other state.</u></p> | |
| §5-502(8) – entire subsection | Withdraw revision from consideration due to the fact that this subsection was submitted for approval in error. This subsection is already in the approved SIP. |

Attachment 3: List of provisions to withdraw from Vermont's July 25, 2014 SIP Revision

| Vermont Air Pollution Control Regulations Section (revisions underlined) | Comments |
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| §5-271(d)(1) – entire subsection | Withdraw revision from consideration due to the fact that this subsection was submitted for approval in error. This subsection is not in the SIP. |
| §5-401(a)(5) - Mineral product industries, including mining, quarrying and crushing operations <u>comprised of any fixed sand and gravel plant or crushed stone plant with a maximum rated capacity of greater 25 tons per hour, or any portable sand and gravel plant or crushed stone plant with a maximum rated capacity of greater than 150 tons per hour.</u> | Withdraw revision, Vermont in the process of submitting a 110(l) analysis to EPA. |
| §5-401(b) – entire subsection | Withdraw revision, Vermont in the process of submitting a 110(l) analysis to EPA. |
| §5-502(4)(c) - <u>Prevention of Significant Deterioration (PSD) Increment review:</u> The evaluation shall demonstrate that, as of the source's or <i>modification's</i> start-up date, the increase in <i>allowable emissions</i> , in conjunction with all other applicable <i>emissions</i> increases or reductions, will not cause or contribute to any increase in ambient concentrations exceeding the remaining available <i>prevention of significant deterioration (PSD)</i> increment for the specified <i>air contaminants</i> , as determined by the <i>Secretary</i> . A demonstration under this paragraph is not required if a source is modified, but there is no net increase in the source's <i>allowable emissions</i> of the <i>air contaminants</i> specified in Table 2 | Withdraw |
| §5-502(4)(d) - <u>Sensitive Area review:</u> The evaluation shall demonstrate that the increase in <i>allowable emissions</i> will not cause an adverse impact on visibility, <u>or interfere with reasonable progress toward remedying of existing man-made visibility impairment</u> , in any <i>sensitive area</i> . | Withdraw |
| §5-502(6)(a) - The <i>Secretary</i> shall not issue a permit approving construction of any source or <i>modification</i> subject to this section if the source or <i>modification</i> is unable to demonstrate, as required under Paragraph (4)(b), that the increase in <i>allowable emissions</i> from it will not significantly contribute to a violation of any applicable <i>ambient air quality standard in a designated nonattainment area</i> unless, prior to issuance of any such permit: (i) The source owner or operator secures legally binding offsetting <i>emission</i> reductions <u>of said air contaminant</u> , not otherwise to be utilized as part of the State's attainment strategies, of the air contaminant | Withdraw |

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| <p>contributing to such a violation from existing sources located in or impacting on the same area (whether or not under the same ownership) such as to provide a net <i>emission</i> reduction acceptable to the <i>Secretary</i>, and</p> <p>(ii) The source owner or operator certifies that all existing sources of the source owner located in the State are in compliance with all applicable rules or are meeting all steps of any compliance schedules contained in any administrative orders or court decrees.</p> | |
| §5-502(9) – entire subsection | Withdraw |

Attachment 4: Clean Air Act §110(l) analyses for Air Pollution Control Regulation §§5-251 and 5-252

The applicability of this section was changed from “fuel burning equipment with a heat input capacity of 250 MMBtu/hr or more” to “steam generating fuel burning equipment with a heat input capacity of 250 MMBtu/hr or more.” The term “Fuel burning equipment” is defined in the SIP as “any furnace, boiler, and/or apparatus, used in the process of burning fuel for the primary purpose of producing heat or power.” This definition would include process heaters that use a fluid other than water. Vermont does not have any fuel burning equipment above 250 MMBtu/hr that is not using water as the heat transfer fluid. In addition, any new fuel burning equipment with a heat input capacity of 250 MMBtu/hr or more, regardless of whether the heat transfer fluid is water or not, would be subject to Vermont’s PSD program and be required to install pollution control equipment which meets the definition of “Most Stringent Emission Rate” (equivalent or better than EPA’s definition of best available control technology in 40 CFR 51.166) for SO₂ and NO_x emissions. This case-by-case analysis will result in permitted emission limits below the requirements of Sections 5-251(1) and 5-252. Therefore, Vermont has determined the revisions made to sections 5-251 and 5-252 conform with Section 110(l) of the Clean Air Act.